

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Erin Drakeley et al. Art Unit : 3692
Serial No. : 09/371,687 Examiner : Elda G. Milef
Filed : August 10, 1999 Conf. No. : 9542
Title : PROVIDING ONE PARTY ACCESS TO AN ACCOUNT OF ANOTHER
PARTY

Mail Stop Appeal Brief - Patents

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Pursuant to 37 C.F.R. § 41.41, Applicant responds to the Examiner's Answer as follows:

I. The Examiner states:

Ellmore was cited in the final office action as evidence to what is an old and well known practice, i.e., using an account identifier with user identification information to authorize access. The examiner recites the following in the rejection of claim 83: "It is old and well known in the art of data authentication that in order to access secure data over the internet, many forms of identification as well as a combination of the identification can be used such as user id, password, account number, and social security number as evidenced by *Ellmore*."¹

Appellant agrees that using various combinations of passwords is a known way to authorize access to one's account. But the claim recites a pretender using his ID to access not his own account, but *someone else's* account. *Ellmore* discloses a way to access one's own accounts. *Ellmore* neither teaches nor suggests accessing *someone else's* account.

II. The Examiner states:

Ellmore provides a detailed description of the process of authenticating a user in the provisional application 60/142,118, filed July 2, 1999. For example, the appellant's attention is directed to pages 7 to 23 wherein *Ellmore* discloses different levels of authentication based on a specific account (e.g., credit card account, liability accounts, mortgages). *Ellmore* teaches that the user identification information used in the authentication may include, based on the account being accessed, the account number, Mother's maiden name, social security number, date of birth, home phone number (see pages 19-20, section 1.4.3.5 of the provisional application 60/142,118, for an example of user authentication for a credit card account).²

¹ Examiner's Answer, page 10.

² Examiner's Answer, page 10.

The accounts discussed in *Ellmore* are those that belong *to the user*, not those belonging to someone *other than* the user. *Ellmore* does not describe accessing *someone else's* account.

III. The Examiner states:

Therefore, the user identification information provided by the user in *Roberts*, is used to download programs accessible by the user (e.g., if the server ascertains that the requester is a sales representative, then it downloads a service applet (program) capable of generating a sales view)-see *Roberts*, col. 10 line 58 to col. 11 line 6, other programs capable of being downloaded are administrative views, user view, customer view-see col. 12 lines 16-26).³

In *Roberts*, the system identifies the user and selects an applet pertinent to that user. There is no step of using the user's identification information "to identify a set of applications unavailable to the" user followed by a separate step of "receiving...information selecting an application from the set of applications."

Claim 83 requires two separate and distinct steps:

- (1) using an ID to identify a set of applications; and
- (2) receiving information selecting one of those applications.

Roberts discloses only a single step: using the ID to directly select the application. In *Roberts*, there is no separate selection of "an application from a set of applications."

IV. The Examiner states:

In response to appellant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., invite a participant to choose an applet (application) are not recited in the rejected claim(s).⁴

Appellant relies on the recitation of two separate and distinct steps in claim 83, namely that of "using the pretender identification information to identify a set of applications available to the pretender" and "receiving...information selecting an application from the set."

At best, *Roberts* only discloses the first step, with the "set of applications" consisting of only a single element, namely the particular applet corresponding to the user. In *Roberts*, the

³ Examiner's Answer, page 11.

⁴ Examiner's Answer, page 11.

user's identification is used to identify the particular applet appropriate to that user. No additional step of "receiving...information selecting an application from the set" is necessary, for the simple reason that the set only consists of a single element.

V. The Examiner states:

In response to the appellant's argument that nothing in *Roberts* corresponds to an "account" as Applicant, acting as his own lexicographer, has defined it. *Roberts* discloses the shared content can include web pages, files, application images, advertisements, interactive forms, data, or application data among any other form of data that can be captured and displayed on the browser. *Roberts* further discloses the sales view, customer view, and administration view. It is obvious that customer account data would be displayed. (*Roberts*, col. 12 lines 1-26).⁵

The cited passage⁶ lists seven different types of "shared content." None of these examples of "shared content" resemble an "account." Nevertheless, the Examiner suggests that one of ordinary skill in the art would look at this list of different examples of shared content and somehow find it obvious that another example of shared content would be an account.

According to *KSR v. Teleflex*, "rejections on obviousness grounds cannot be sustained by mere conclusory statements."⁷ Instead, the Examiner must provide "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."⁸

The Examiner's statement, which is that one of ordinary skill in the art would find it obvious to include, in *Roberts*' list of different kinds of shared content, an account, is a conclusory statement unsupported by any rational underpinning. As such, it fails to support the legal conclusion of obviousness.

Contrary to the Examiner's assertion, one of ordinary skill in the art would understand *Roberts* as disclosing a way for a salesman to guide a prospective buyer through a software demo

⁵ *Examiner's Answer*, page 12.

⁶ *Roberts*, col. 12, lines 12-16. (The shared content can include web pages, files, application images, advertisements, interactive forms data, or application data among any other form of data that can be captured and displayed on the browser.)

⁷ *KSR v. Teleflex*, 127 S.Ct. 1727, 1741 (2007).

⁸ *Id.*

of a product. Specifically, one of ordinary skill in the art would have noted the following passage:

A further disadvantage of downloading a software demonstration is that whatever is downloaded is viewed by the customer alone without the assistance of the sales representative. The software demonstrations are not usually concurrent-use software applications that can be viewed simultaneously at remote locations. Thus, the software applications cannot be viewed by both the customer and the sales representative simultaneously. Further, if they were, this would required even longer download periods. In addition, such applications would required a large amount of the customer's resources to run and be difficult for the customer to manipulate.⁹

One of ordinary skill in the art would have also known that, unlike software demonstrations, accounts are *not* intended for mass distribution. In fact, one of ordinary skill in the art would have recognized that considerable effort goes into ensuring privacy of accounts. As evidence of the extent to which privacy for accounts was sought at the time of the invention, Appellant draws attention to the Examiner's own citation of *Ellmore*. For example, on page 25, *Ellmore* makes specific reference to the importance of account privacy in the following passage:

The login page will have a message indicating "THIS SYSTEM IS RESTRICTED TO AUTHORIZED USERS. INDIVIDUALS ATTEMPTING UNAUTHORIZED ACCESS WILL BE PROSECUTED. IF UNAUTHORIZED, TERMINATE ACCESS NOW!" iXL will alter the verbiage to make it more user-friendly. Note that Legal does not deem the message as necessary, however the business users have decided to include it to be on the safe side and to instill consumer confidence in Chase's concern for security.

One of ordinary skill in the art would have understood *Ellmore* as teaching ways view one's own account, not to share it. As noted above, *Ellmore* intended to "instill consumer confidence in Chase's concern for security." Thus, one of ordinary skill in the art would have had no reason to think *Roberts'* shared content could possibly include anything resembling the customer's account as described in *Ellmore*.

⁹ *Roberts*, col. 2, lines 40-51.

VI. The Examiner states:

Regarding claim 85 and the appellant's argument that *Roberts* fail to reference any text file in the portions cited by the Examiner (col. 11 line 1 to col. 12, line 35), and consequently, *Roberts* fail to disclose "the retrieved access information for storage in an access information field of a text file associated with a session of the pretender." The cited portions of *Roberts* disclose a database on a server wherein the server communicates with the database, preferably a relational database. When a requestor logs on to the server, the server checks the database to see whether the requester has a valid log-on and the associated applets required by the requester, once the server validates the log-on, the server will download one of the applets [applications]. It is well known in the art of computer programming that a database is a file composed of records, and a text file is a file composed of text characters. It is therefore obvious that a database would contain text files.¹⁰

The Examiner relies on a flawed syllogism to suggest that a database necessarily contains text files. The fact that a database has records and a text file has text does not lead to the conclusion that a database has text files.¹¹

The Examiner further asserts that one of ordinary skill in the art would have found it obvious that the database described by *Roberts* must contain text files. But this is a mere conclusory statement. The Examiner does not provide anything close to *KSR*'s requirement of "articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."¹² As set forth by the Court, "rejections on obviousness grounds cannot be sustained by mere conclusory statements."¹³

SUMMARY

The Examiner continues to overlook claim 83's requirement that the pretender ultimately accesses an account of another party, and not his own account. This idea of using one's own identification information and another person's account identifier to access that person's account flies in the face of conventional wisdom.

¹⁰ *Examiner's Answer*, page 12.

¹¹ The flaw in the Examiner's logic can easily be seen by substituting less technical words. Logically, the Examiner's argument is no different from asserting that since movies contain images and books contain text, it follows that movies contain books.

¹² *KSR v. Teleflex* at 1741.

¹³ *Id.*

For example, it is well-known in on-line banking that after identifying one's self, one can view *one's own* account. But the idea of peering into someone *else's* account is altogether another matter. One of ordinary skill in the art would surely recognize that any financial institution that would offer, as a service to a customer, the ability to inspect other customer's accounts would find itself out of business in short order.

The idea of inspecting other people's accounts is implicit in claim 83. For example, claim 83 recites "on the basis of pretender identification information and the account identifier, verifying that the pretender is authorized to access the account [of the particular party]." Claim 83 also recites "causing the first code to generate a third web page that displays, *to the pretender*, a view and information that is the same as a view and information of a web page that would be displayed *to the particular party* were the particular party to access the account [of the particular party] through a selected application."

The "view and information" clearly must include account information from the particular party's account. The claim further requires that "a first browser displays the view and information [of the particular party's account] *to the pretender*." As a result, the pretender is able to inspect an account that is *not his own account*. Instead, the pretender inspects an account belonging to the "particular party."

The Examiner's continued reliance on *Ellmore*, which discloses the unremarkable fact that accessing one's own account with a password is known, is misplaced. Contrary to *Ellmore's* disclosure, the claimed invention involves accessing *other people's accounts*, not one's own.

For these reasons, and the reasons stated in the Appeal Brief, Applicant submits that the final rejection should be reversed.

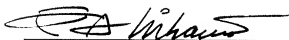
No fees are believed to be due in connection with filing of this reply brief. However, to the extent fees are due, or if a refund is forthcoming, please adjust our Deposit Account No. 06-1050, referencing Attorney Docket No. 08575-0048001.

Applicant : Erin Drakeley et al.
Serial No. : 09/371,687
Filed : August 10, 1999
Page : 7

Attorney's Docket No. 08575-0048001

Respectfully submitted,

Date: October 28, 2008



Faustino A. Lichauco
Reg. No. 41,942

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110
Telephone: (617) 542-5070
Facsimile: (877) 769-7945

22055528.doc